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COMMITTEE ON BANKING, COMMERCE AND INSURANCE
January 18, 2005
LB 119, 118, 59, 88

The Committee on Banking, Commerce and Insurance met at 1:30 p.m. on Tuesday, January 18, 2005, in Room 1507 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB 119, LB 118, LB 59, and LB 88. Senators present: Mick Mines, Chairperson; Pam Redfield, Vice Chairperson; Mike Flood; Jim Jensen; Joel Johnson; Chris Langemeier; LeRoy Louden; and Rich Pahls. Senators absent: None.

SENATOR MINES: Good afternoon, everyone. I'd like to welcome you to the Banking, Commerce and Insurance hearing. My name is Mick Mines and I represent the 18th Legislative District and I'm also honored to serve as Chair of this committee. For your information and for the first time, let me introduce the members of the newly and reconstructed committee. On your far left, we'll start with Senator Rick Pahls from Gretna. He represents District 31. Senator Joel Johnson from Kearney, District 37. Senator Jim Jensen, Omaha, District 20. And Vice Chair of this committee, Senator Pam Redfield from Ralston, District 12. On your far right, Senator Chris Langemeier from Schuyler, District 23. Schuyler, 1968, just beat the tar out of my basketball team (laughter). We'll get along.

SENATOR LANGEMEIER: We're still talking about it.

SENATOR MINES: (Laughter) Yeah, I'll bet they still talk about it. Senator Mike Flood from Norfolk, District 19, and Senator LeRoy Louden from Ellsworth, District 49. To my immediate right is committee counsel, Bill Marienau. On my left is Jan Foster, our committee clerk. Today our committee is going to take up bills not in the posted order. We will start with LB 119 and then do LB 118, then LB 59 and LB 88. Our hearing today is a public part of the process and I'm glad you're here. Feel free to come forward and speak in turn and it's your opportunity to express your position and your thoughts and opinions. To better facilitate today's proceedings, I ask that you help us and abide by a few of our guidelines. There are testifier sheets on the table in front of me, as well as by the doors, and please fill those out before you come forward to testify. Just drop them in the box. And when appropriate, we're going to have separate sign-in sheets, but we won't

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need those today. The introducing senator will make the initial statements and then following introduction of the bill we'll hear testimony from proponents, opponents, and those in a neutral capacity. The committee is going to strive to provide and give equal time to both sides and we'll do our best to get through this as quickly and as fairly as we can. Closing statements, by the way, are always reserved for the introducing senator only. It's hot in here, by the way. Is it warm? Yeah, it's kind of warm. Can you see what maybe we can do about that? Or maybe it's just stage fright on my part (laughter). If you have a prepared statement, just hand it to one of our pages for distribution and for now and in the future, ten copies are requested. And, by the way, that will be inserted in the record. And if there are any other testifiers following, please pay attention to the testifiers preceding you so that we don't become repetitive and, you know, we understand the first time. And, most importantly, when you come to testify, please state your first or spell your first and last name for the record. The transcribers love it when we spell our names. So with that, committee, let's begin and we will start with LB 119. And I will turn the chairmanship over to Vice Chair Redfield.

SENATOR REDFIELD: Senator Mines, when you're ready.

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SENATOR MINES: Thank you, Senator Redfield. My name is Mick Mines, M-i-c-k M-i-n-e-s, representing the 18th Legislative District and I am here today to introduce the insurance department bill. It's an all inclusive bill and with no further ado, let me turn this over to Director Wagner who will fill you in on the components of LB 119. Thank you.

TIM WAGNER: Thank you. My name is Tim, T-i-m Wagner, W-a-g-n-e-r. I am the Nebraska Director of Insurance and the first thing I'd like to do is congratulate the committee. I haven't had a chance to meet its new members yet. I hope to do that. Unfortunately, I've been a little under the weather and out of town and a combination of the two just have not been conducive to introductions and I apologize for that. But I do look forward to working with

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members of the committee. And, if at any time you have questions the insurance department is there to help, to assist you in providing you with information upon which you can make some of the decisions that you have to make. I apologize that we do have a 119-page behemoth here to talk about today and I'll keep my testimony as short as possible. If I go too fast or don't feel...just interrupt me because I am trying to get through a number of issues. There's 16. The first is the burial pre-need act (Burial Pre-need Sale Act) and this act was enacted in 1986. The insurance department has the responsibility of monitoring the funds held by these organizations to make sure that the money is in the bank when the need does arise. It was anticipated that we would conduct field examinations to determine where the assets were for these funds and that we would live off the fees created by those examinations. Unfortunately or fortunately, we have found that we do not need to get into the field that often and, as a result, we're not generating any fee income from examinations. In order to support the function and we do believe in the department, that each function that we should live on its...on the expenses ought to be borne by those that we're serving because they are in a for-business...for-profit venture. That we are requesting that the fees associated with our review licensing be doubled and the reason for that is that it would just offset...we're taking in about \$5,000 a year, and we're spending about \$40,000 to monitor these things so we believe that it's only right that they pay rather than the citizens of Nebraska. The second thing in the pre-need act that we would like to do, the only regulatory tool we have, if in fact, we have a problem is to revoke the license. In other venues that isn't the case. We have the ability to fine; we have the ability to suspend licenses. We would like that ability because it does give us some flexibility rather than saying, okay, we're going to revoke your license. You're in violation. There should be some other mechanisms or tools that are available for us to monitor. The second item, number two, is credit for reinsurance and really here, we're not changing any of the provisions. The NAIC which is the National Association of Insurance Commissioners and you're going to hear that term a lot, is an organization of insurance commissioners that create model laws and regulations. There is a model law for the credit of reinsurance. We have all the provisions in our existing statute to comply but we don't have the model. In other

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words, in the order and the terms and we have...rather than have insurers struggle to try to determine whether or not we do have the model, we are simply recodifying this to put it in the same format that the NAIC model is in so there's really no change there. The third item deals with two mandated benefits and the first one is TMJ with is temporomandibular joint and since I can't really even pronounce the term we're going to ask that that section or section 9 be deleted from the bill. There has been some unexpected and unanticipated concerns regarding that provision. We thought we were clarifying but in the minds of some we're doing a little more than clarifying and that certainly was not our intent. The second is breast reconstruction. And this is a federal mandate that must be applied to all policies. Right now it applies in our statutes only to group insurance, group health insurance. And by adopting this amendment, it would apply to individual policies that are issued as well and that would bring us into conformity with federal standards. The fourth thing is an amendment of the filing date that is necessary for filing what are form B's. Form B is a document that is filed by holding companies with the department and a holding company is a company that owns an insurance company, explaining what transactions went on in the previous year, inter-company transactions, changes of boards of directors, those kinds of information. It has been filed on March 1. March 1 is a magic date within the insurance industry. That's when all of the annual statements are filed. And we're asking that that filing date be changed to May 1 simply for administrative purposes for us and for insurers since they're trying to complete all of these filings of the same date. The fifth thing is a utilization review. Now this is an issue that we have asked an amendment. An amendment really isn't necessary, in our opinion, because utilization review applies only to health benefit plans. We don't consider auto medical payments, uninsured motorists to be medical payment plans. And what we are asking the committee to do in this proposal is to incorporate for clarification that it does not apply to these automobile coverages. That...and our opinion is clear, but there is some concern, on the part of some, that there could be some people who would think that it did apply. It never has applied; we don't believe it does apply. And this is simply, in our mind, a clarification. Number six is the surplus lines office. And what we have in our statutes today is a

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requirement that a surplus lines agent have an office in Nebraska. While we like the business and we certainly like the residents, that doesn't conform with the financial services modernization act (Financial Modernization Act) of 1999 and, as a result, in order to be in compliance with what we call GLBA, it is necessary to delete that provision that an office be maintained in Nebraska for a surplus lines agent. Number seven deals with the ability of broker-dealers to hold securities of domestic insurers. This is an NAIC issue. The NAIC has broadened the ability which is previously and heretofore been limited to banks and trusts, can hold securities...physically hold and take possession of securities on behalf of insurers. This would allow broker-dealers to do that same thing. Number eight is a pending model, if you will, and would be part of what we call accreditation standards for the NAIC. And accreditation means that every insurance department must be accredited by the NAIC. In other words, we have people who come in and review our laws, review how well we do in our exam process or how well we do with financial analysis of our domestic industry. In other words, that we are doing our job and so this would be a standard that we would need to have to comply with accreditation. And it's an actuarial opinion model. And we do get actuarial opinions today and they're required to be filed with the annual statement. But what this would do would be to go a little further and require that we have supporting documentation available to us on request and in return for that, that supporting documentation would be held confidential. That's an important part of this provision. It is an NAIC model. It's been vetted at the NAIC level. There's been input from the industry and from regulators and others, accounting firms, actuarial firms and this seems to be a consensus kind of a thing nationally. Number nine is rule-making authority for the workers' compensation pool. And what we say, by workers' compensation pool, it's a vehicle by which it's an insurer, if you will, a facility of last resort for people that can't buy workers' compensation insurance in the marketplace for one reason or another. We are just simply asking for rule-making authority here. And the reason we want that rule-making authority is to clarify, give us the ability to clarify who is eligible. The requirements in the statute require in good faith entitled but unable to obtain insurance. And we just need to define...we need the ability to really get some clear guidance as to what good faith is.

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In other words, nonpayment of a previous insurer's premiums, is that bad faith? Those are the kinds of things that we would like to address in the regulation. Number ten deals with out-of-state trusts that issue health insurance benefits to citizens of our state. And an out-of-state trust can be cited clearly in another state. We can't reach...court decisions have held that we cannot reach out to them and apply our mandated benefit standards to certificates of coverage issued out of this trust. In fact, we don't have the authority to even approve the certificate forms nor do we have the ability to even see these policies. What it said, there have been some innovative states that have apparently enjoyed the idea of having trusts cited in their state. And they say that if you issue a trust in our state, our mandated benefits do not apply. In other words, no mandated benefits apply. Ours won't, the mandated benefits of the state where the trust is cited, their benefits don't apply. And what we're saying here in this language is that if there is a state, the trust is issued in a state and that state's mandated benefits do not apply by statute, that our mandated benefits apply. Now, this clearly could be subject to some litigation but we would like to give that a go because we just see a loophole here that is not in the public's best interest. Number 11 is a liquidating trust. And what we're talking about here is the event, the ugly event of an insurer becoming insolvent. And when it becomes insolvent the insurance director by statute is the receiver and works under the supervision of the district court here in Lincoln. One of the things that happens when we close a company down, we take control of it, we generally dissolve the corporation. We believe that we have authority but it's really unclear. When we seize a company that's insolvent, if we could strip the corporation away from the assets we could sell the corporation and its licenses and put that money, the proceeds from that sale into this liquidating trust along with the other assets. In other words, we could get more money to the creditor and that's what our goal would be in these instances. Licenses sell anywhere...the market fluctuates from anywhere from \$5,000 estate up to \$50,000 estate. So, there's a sizable amount of money that can be generated from these estates if we can do that. And our activity relating to these receiverships is under the supervision of the district court and we give the court also some guidance here rather than the judge having to make a decision that we have that

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authority. We'd just as soon have it in the statute. Number 12 is an issue regarding separate accounts. And a separate account is money held by an insurer that is not necessarily...it's an authorized transaction of an insurer but it isn't necessarily insurance. It's like a pension fund, for instance, would say here's \$20 million of our pension fund. We want you to invest this money and the insurer would say, well, we'll guarantee you "X" rate and then they'll go ahead and invest it and try to make a little money on the margin. We have authority today to do this. It's very clear and these are funds that then become segregated and really not part of the general assets of the company. They're really separate. So if the company were to have some financial issues or problems these are, in fact, separate funds. What we're asking in this bill to do is to basically say, for the benefit of large pension organizations, that there is authority that these are separate accounts and they're recognized as such in the statute. Okay? Number 13 are a couple of amendments to the mutual holding company act (Mutual Insurance Holding Company Act). Nebraska was not the first but it was definitely a pioneer in the use of mutual holding companies. We have a number of them domiciled in our state today and they have been a benefit, if you will, to our state because we had a number of mutual insurance companies that needed more flexibility. And what we're asking for today is some tweaking. We are not asking for anything that a number of other states don't have. But it does give us...we want to be on the forefront of providing flexibility for these organizations to grow in Nebraska. And what it clarifies is in the statute that mutual holding companies can merge. Well, we know they can merge but it's in the statute. And a mutual holding company can make an acquisition of another stock, a stock insurer. Now an insurer can make an acquisition of a stock insurer. That's been forever but we don't have it explicitly stated that a mutual holding company can acquire the stock of a stock insurer and that's what this provision would do. Fourteen is one that would be more substantive in nature. And what this is is the property and casualty rate form act (Property and Casualty Insurance Rate and Form Act) and this really reintroduces Senator Loudon's LB 1185 from the last session that got through the committee but it just couldn't get through the floor due to time constraints. I don't know if there were any other issues. I don't believe there were. But what

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we're doing is changing the way we regulate the rates of personal lines insurance. And this is primarily automobile and homeowners insurance. Right now we have a statute that is what's called "prior approval." And that means that before an insurer can raise its rates or lower its rates or change its rating plan in some way it must seek approval from the Department of Insurance. This system was an outgrowth of a court decision in 1944. Prior to that time we didn't regulate rates. But we changed the law in such a way that we created rating bureaus and the trade-off was that if you're going to make rates in concert and not be subject to anti-trust, that there should be some public supervision of how that's done. And so we devised a system in the late '40s that was a prior approval system, and "we" meaning all of the insurance commissioners did this save a couple exceptions. But what has happened is we've done away with rating bureaus. There are no rating bureaus anymore. It is illegal for an insurer to make rates in concert. They can't do that. They can't get together and set rates. That's a violation of our law. And so we're using a system that was designed for a quasi-monopolistic, if you will, environment. But the environment we're in today is a competitive environment, one in which insurers compete with one another based on rate. And so what we would like to do is recognize that change and change this system of rate regulation from prior approval to file and use which means the insurer simply can file the rate with the department and the rate is in effect. Now the department can review that rate afterwards and if there are some issues, you know, bring some action. The other thing that is important to realize in this change is that we've always had three rate standards. The standards are excessive, inadequate, or unfairly discriminatory. And what that means is the insurance director if he found a rate or she found a rate that didn't comply with those standards, that rate filing would be disapproved. We're asking that there be only one standard and that standard is if rates are inadequate; if they're inadequate for the insurer to survive in the long term because it's charging rates excessive. We're taking that out of the standard with the presumption that we have a competitive marketplace. If the director feels that a market is not competitive, upon a hearing that can be a determination. And when a market is not competitive, then we reinstitute the standards of prior approval, of excessive so that is really...we have a public safeguard to make sure

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that there is a competitive marketplace. The unfairly discriminatory we're taking out as a standard. We learned over time that it was a hollow. It looks like it's giving the insurance department authority to set policy but it is not; it does not. If an insurer by court decision, if an insurer can show that the premium and losses relating to different classes of business are different the director cannot impose a standard that the rate is unfairly discriminatory. And so we believe that it's you the legislators and not the insurance department that sets public policy. You have said to us, rates are unfairly discriminatory if they're based on race. Rates are unfairly discriminatory if they're based on religion. Rates are unfairly discriminatory if it's a result of spousal abuse, there's some rate distinction. But you have the authority and I have the responsibility of bringing to your attention those rating situations that I believe are wrong, inherently wrong. And then you can make the decision whether you think there should be something, some prohibition rather than me as an administrator saying, I don't like that so I think it's unfairly discriminatory because if I do that I'm going to probably lose in court anyway. But, in any event, I think we're giving away something that we really don't have. The rating law is going to be amended a little bit. And this language that we have is the language that we adopted, I believe, in 2000 for commercial lines. But we accepted from the commercial lines workers' compensation insurance because we believed that it was a little volatile. If there's anything that can really be political, it's workers' compensation rates. We want to apply the commercial law standards now to workers' compensation so it would no longer be prior approved. They would simply file their rates. And with that, in the commercial law that we don't have in the personal lines nor the farm or ranch, we have given insurers flexibility by statute of up to a plus or minus 40 percent. And that would be extended to workers' compensation as well. And last year we had hearings relating to workers' compensation and I believe it was the consensus of many that our inability to provide some rating flexibility resulted in some damage to the marketplace. In other words, people weren't able to buy insurance that could have bought insurance had we had that rate flexibility. So, that is really...but I want you to realize, those of you that are new, and we did have hearings over the summer on this issue. But I want you to understand this is a significant change

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and this is a significant piece of legislation and a change in public policy, one that I wholeheartedly endorse, one that I believe is long overdue. As regards to file and use, the majority of states have file and use today for personal lines, but there is definitely a division between regulators. There's about seven or eight states that would cling to prior approval laws. This has reached Congress. This is one of the issues that has given some rise to the argument about federal regulation rather than state regulation because the inability to price products clearly can be very damaging and given the wrong administration by a bureaucrat such as myself, can lead to some real damage both to the public and to the insurers as well; in the public by the fact they can't buy insurance and insurers, the fact they're providing coverage and losing money and no one gains in that scenario in my opinion. Number 14 and it's going to take a little explaining and this is the interstate life insurance policy compact (Interstate Insurance Product Regulation Compact). And this is a response, if you will, to an argument...not an argument, it's really a fact. Insurers compete with other financial services firms such as banks and mutual funds for the saving dollar in life insurance, in particular, and other annuities, those types of coverage even to the extent of long-term care in a sense is a financing mechanism. And in this competition, the other entities can go to one place. First of all, they're not regulated necessarily in terms of the form that they're using or the vehicle. But what regulation does apply is one place and that's a national regulator. And we have 50 states and the issue really is, would you rather be regulated by a gorilla or 50 monkeys? In essence, the problem becomes...we probably have 45 nice guys and we have about five regulators that have horns and a tail. In other words, they don't get policies approved. They sit on them. So we have these insurance companies that aren't able to enter the marketplace with a national product. In fact, in some instances before they ever get the product approved, in some states it's outdated and the market is off to something different. And it has caused the life insurance industry untold grief. And the life insurance industry has actually approached Congress and said, you know, we want a dual charter because this problem is so bad we want to be able to get a federal charter. We want to be like banks. We want to be able to go to the state venue or a federal venue for our corporations. And they have a point. We have some

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problems. And the interstate compact is designed by state regulators to create a vehicle where an insurer can go to one place and get approval of a product and sell that product everywhere in the country. Now it gets a little difficult and I'll try to explain the standards. How do you do this if you have states...has this standard? In other words and we've talked about maybe we have a two-year suicide provision meaning that the company can void a policy in two years...within two years if there's a suicide within two years. But some states have one year; some states may have three years. And it will take a change, if you will, when you approve and we are asking strongly for approval of the ability to enter into a compact. It means that we will create and are creating national standards. In other words, it isn't that policy to meet those standards. Our standards that are worked out by the NAIC and soon to be worked out by the commission. The commission will adopt what are called NAIC standards. And as commissioners we've been working on those standards for the last two years. It's not an easy issue. There are regulators that believe that standards should be much more strict. There are other regulators that believe that standards should be less strict and less onerous. But anyway, we are hammering out these issues. If you were to object, if you would, to a standard there is an ability within this compact to opt out of a line of insurance or a standard. There's also the ability, if the standards are too onerous and we find that our market is...our citizens aren't able to afford coverage based on those standards. There is the ability of the insurer to file directly with the insurance department in a given state. But this is a compact. It wouldn't go into effect until 26 states have adopted the compact. I think eight or nine have to date. There will be a number of states that this compact will be up for review and discussion in state legislatures this year. The other trigger is, if there's 40 percent of the market exists then it will trigger the compact. There are no problems for us in terms of withdrawing for the compact. I know that in Nebraska we've had a rather painful experience with the nuclear compact, nuclear waste compact. There's nothing like that here. It's an easy in and it's an easy out if you were to say several years from now, we don't like this compact. However, if that were to occur I guess I would have to submit to you that we as states are very near losing our authority to regulate the insurance business to the federal

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government. In some cases, we have lost support of the industry because of a few states and I like to think not Nebraska, not Nebraska laws, not Nebraska regulation. But there are meaningful debates and dialogue going on in Congress now and have been going on about a federal charter. I for one endorse state regulation but I recognize that it has its failings and the compact would go a long way to curing what is its most basic failing and that is the ability to deliver products nationally. The second failing is clearly the ability to price products and that we're addressing, if you will, with the property and casualty. And those are the two, I think, fundamental flaws in our regulatory system. I'd like to now go on to 15 which is investment code changes and we're asking for some changes in our investment code. We're asking that the real estate provisions be changed. Right now there is a requirement that an insurer can loan no more than 75 percent loan to value on real estate. We're asking that that be amended to 80 percent or an increase of 5 percent which would duplicate the requirements in California, Illinois, Iowa, and New York, Texas, and New Jersey, all large insurance states as is Nebraska. The other provision would be that an insurer, if it has a first mortgage on a piece of property, may enter into a second mortgage on that property as long as it doesn't exceed that 80 percent. That would be a change but wouldn't really increase the exposure, if you will, because of the 80 percent. The combination of the two would be no greater than the 80 percent. The next is a term...I'm going to use a term called a mezzanine loan. And these are actually loans that are given to developers of large commercial properties. And it is a loan that is separate and apart from the loan that's secured by the real estate. This is a loan to the equity interest. It's secured by the equity interest or that 20 percent. And this is a new venture. We're asking that there be a limitation on the ability to engage in the mezzanine loan to 3 percent of the assets, no more than 3 percent of the assets of an insurer. They become a factor and are really part of the financing of very large commercial real estate developments. The last issue that we have is a change in the investment code to add replication transactions. And they're added to the existing language regarding the ability to enter into hedging and income generation derivative transactions. A replication is a transaction is one that replicates the cash flow of a security versus actually holding that security. In other

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words, it's a device whereby the credit risk can be peeled off and financed separate and apart from the underlying security. And that concludes my testimony and I certainly appreciate and entertain any questions if.

SENATOR MINES: Well, Tim, thank you. That's a difficult bill to understand. It is...I asked if it was the kitchen sink bill when it came in and it's almost. And thank you for a great explanation. Members of the committee, do you have questions at this time? Senator Johnson.

SENATOR JOHNSON: Just one that popped in my head as you were talking there and get back to the compact idea again and so on. What's, I guess, popped into my head was when you deal with a multistate compact, how do you keep companies from going to the easiest place to get their credentials that are good throughout the system?

TIM WAGNER: Actually, it's the compact and I didn't explain that very well. And I apologize for that. It's actually the compact would actually approve the product rather than the weakest link in the system. And the product would be approved only if it conformed to the standards of the compact so yeah, there would be no way for an insurer to gain that system unless they went individually...

SENATOR JOHNSON: Yeah, well, I...

TIM WAGNER: ...to states and then we have the...

SENATOR JOHNSON: ...I just was unclear about that as...

TIM WAGNER: Yeah, yeah, I apologize.

SENATOR JOHNSON: ...to keep people from using the system.

TIM WAGNER: Yeah. In fact, in my mind, quite frankly, the standards as we debate these, there's definitely diversions of regulatory thought on what are proper standards. And I think you will find, we will find as we go down this path that those standards are going to be a little higher than we have had in the past in most states.

SENATOR MINES: Any other questions from the committee? Hearing none, thank you for your testimony.

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TIM WAGNER: Thank you.

SENATOR MINES: Before we proceed, for the benefit of those that might be watching, I'll ask for proponents, opponents, and neutral in this bill. Could you raise your hand if you're a proponent of this bill? I see one, two, three, four, five, six proponents. Opponents, would you raise your hand? I see one...

_____: Oh, opponents?

SENATOR MINES: ...opponent. And those in a neutral capacity. I see none. As you come forward, we have an on-deck chair. Please, sit there behind the testifier. Please drop that. Thank you very much. And our page...I lied. Our page is not available. Thank you. They're working on the heat, by the way, and it's brutal (laughter).

JIM HALL: (laugh) Lends new meaning to being on the hot seat. I'll say that (laughter).

SENATOR MINES: Yes, it does. Yes, it does. Welcome. Feel free to go ahead.

JIM HALL: (Exhibits 1, 2) Thank you, Mr. Chairman. My name is Jim Hall, J-i-m H-a-l-l. I represent the American Council of Life Insurers. They're a national trade association comprised of 386 companies and those companies hold about 70 percent of the life insurance, annuities, and long-term care in force in the United States today; about 50 percent of the disability income insurance in the United States today. We're here in support of LB 119 generally, but specifically, in support of section 37 which Director Wagner just explained and that is the Interstate Insurance Regulation Compact. We think that the enactment of the compact by Nebraska and other states is a major step toward preserving state regulation of insurance and it's a major step toward fixing what has been seen as a growing difficulty in the filing and product approval area of the state regulation of insurance. As Director Wagner indicated, the three major advantages to the compact will be that companies, instead of having to file in 50 states, 50 different versions and have 50 different product approval times, they will be able to when they're filing within a

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compact state, have one single product filing, one single product standard and an approval time that I think will be vastly improved over some states. Some states, I must say, are very good. They approve products in maybe 30 to 60 days. Other states, however, take as long as a year to approve a product. And it isn't that they're examining the product for a year, it takes them a year to get to that particular company's filings. And happily, Nebraska isn't one of those states but there are those out there and that's partially what the compact is designed to address is to standardize the filings, to speed up the filings, and to give you one place to file. Consumers are going to benefit from a strong uniform national product standard that the regulators are going to be hammering out the standards on each of these products. And the products that will be regulated at the moment by the commission are life insurance, annuities, long-term care, and disability income insurance. Sometimes the product probably will...the standards will be fairly easy to do such as term life. Other times, long-term care insurance may be the subject of debate because of its particular features. In any event, they will arrive at national standards after a considerable debate and the regulatory approval of the standards will be made by specialists that will be working with the commission. Now the thing to remember for each of the states that enact the compact is that you are not bound by the compact standard on a particular line of insurance or on a particular product. Either the insurance regulator, Director Wagner, can reject the product standard if he sees fit or the Legislature can reject the product standard if they see fit. In addition, if the Legislature decides they want to withdraw from the compact for some reason, you're free to withdraw; there's no penalty of any kind and you can rejoin the compact at some future time if the Legislature so desires. You merely need to enact the necessary legislation according to the compact's terms. Nine states have already enacted the compact. Those are found on page two of the handout that you have there. In addition, Kansas last year enacted a resolution supporting the compact and they are introducing...their insurance department is introducing compact legislation this year. In addition to a number of the states that are introducing the legislation this year, I know Florida, New Jersey, Pennsylvania, Illinois, and Texas are all introducing this year. Your neighbors in Iowa have enacted the compact. Colorado has enacted the compact and,

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as I mentioned earlier, Kansas will be introducing their legislation. You should know that the compact has received the endorsement of the National Conference of State Legislators, the NCSL, and also the endorsement of the National Conference of Insurance Legislators, NCOIL. So, and as I said, I want to be brief here. I want to commend the insurance department and Director Wagner for their introducing this legislation and we certainly urge your approval of it. I'll stand for any questions. Thank you.

SENATOR MINES: Thank you, Mr. Hall. Questions? Senator Redfield.

SENATOR REDFIELD: We all understand that there is a problem in some states with what you might term a rogue commissioner. If those states choose not to join the compact, do we solve the problem with the interstate compact? I understand the filing a one-stop house would make it much easier. But would the pressure to federalize the oversight of insurance go away if, in fact, we have five large populous states that still stay outside the compact?

JIM HALL: I think and there is a multi-part answer to a multi-part question there, Senator. First, the compact, I think, enactment and you will get enactment of the compact or creation of the active portion of the compact either through 26 states or through states with 40 percent of the premium. There are always going to be some states which have historically been independent and have historically simply not gone along not even with the NAIC and their model laws. And if those states continue to do this, well, the industry will simply continue to have to deal with those states individually. The idea with the compact is to get the rest of the states, the majority of the population, if you will, the majority of the states to have a situation where the companies will be able to one-stop file in all the rest of those states. And then the difficulties, if you will, posed by several individual states are going to be no different than we've dealt with in the past and we'll still have to deal with them. I anticipate there may be a couple of states that are going to hang out. But I think, as I say, Florida is introducing the legislation, Pennsylvania, Illinois, New Jersey, Texas. All the...fairly large states. California, to my knowledge, is not and under the current insurance commissioner, I don't know that they would, at

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least not this year. But one never knows. Hope springs eternal. But I think, as I say, the reduction of the pressure regarding federalization, yes, I think even if those...a couple of states that have been difficult continue to remain aloof and difficult, I think enactment of the compact will definitely be a big step toward preservation of state regulation and take that federalization pressure off.

SENATOR REDFIELD: Thank you.

JIM HALL: Thank you.

SENATOR MINES: Other questions? Mr. Hall, thank you.

JIM HALL: Thank you, Senator.

SENATOR MINES: Next testifier, please. Ms. McKenzie, welcome.

JAN MCKENZIE: Senator Mines, members of the Banking, Commerce and Insurance Committee, for the record my name is Jan McKenzie, J-a--can't even remember my name. Jan McKenzie, J-a-n M-c-K-e-n-z-i-e, representing the...as executive director and lobbyist for a group of Nebraska-based health, life, and property and casualty companies. I will be brief and say that we are in support of all aspects of LB 119 and would like to thank the department for their efforts over the interim in working with the industry to make sure that what you have in front of you does have full support of the Nebraska domiciled industry in the state. I've dropped off in some of the new members' offices the latest directory of who those members are and I will drop them off in other offices. I got notice yesterday of a change in e-mail and phone number so I will get that updated and to you individually. I would answer any questions you might have.

SENATOR MINES: Committee, any questions? Seeing none, thank you for your testimony, Jan. Next testifier.

JOE ELLIOTT: Mr. Chairman, my name is Joe Elliott. I'm a lobbyist with the Professional Insurance Agents of Nebraska. We have about 350 plus agents throughout the state from one end to the other. And our organization has been long-time supporters of the file and use system that the commissioner

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talked about. We've had prior approval in the past and many, many states have eliminated that and changed to file and use, and we feel that we are in due time to do it now. Commercial lines was deregulated about two and a half years ago and that has been successful. It's opened up some new markets for agents and also to the companies. And I think one problem line as Senator Loudon knows is workers' comp. And we are now deregulating the rates there and giving the companies much more flexibility than they've ever had in the past so if they got a real good risk they can do something rather rapidly. We're not deregulating the forms. The forms still have to be approved by the workmen's comp court. But all personal lines including homeowners, tenants, private passenger automobile, mobile, and so forth will all be deregulated. You still will have a lot of insurance lines that you're still going to have the commissioner regulate. For example, medical malpractice, Senator, is not going to be deregulated. Insurance in noncompetitive markets as determined by the insurance commissioner, this is a key one especially in the far reaches of the state where no company wants to go out and invest a lot of money because they can't handle the claims properly. So, that's an important one. Rental auto, pools, we have three or four pools in the state of Nebraska...city, counties, and schools and rental auto. And let's see, assigned risk plans. That's your nonstandard auto will still be regulated and some other miscellaneous personal lines. And then the other key one is the fact that if the director after hearing and notice, the company has not met the standards of, in this case, inadequate...he has the right to call that company in and explain what they're doing so there's still the protection there. I also like to feel that as independent agents we have the protection for the insured because we look at the rates and we can tell if the company is out of line and if some company representative comes in and says, why aren't you giving us more business? We can simply say, well, you just look at our computer runs and you're not competitive. And they can react accordingly. I think the system will work very well and we are totally in support of it as well as including the compact.

SENATOR MINES: Great. Committee, do you have any questions? Thank you, Joe.

JOE ELLIOTT: Thank you.

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SENATOR MINES: Next testifier?

TED FRAIZER: Mr. Chairman, members of the committee, my name is Ted Fraizer, F-r-a-i-z-e-r. I'm a lawyer in Lincoln, represent the American Insurance Association which is a trade association of 400 of the larger property and casualty insurers in the United States. Before commenting on the bill, I do think that the record should reflect that even before the first hearing of this committee this year, the World-Herald had a very, most complimentary editorial on Senator Mines this last weekend. And I think that should be acknowledged by all of us...

SENATOR MINES: You're sucking up at this very minute, aren't you (laughter)? It's working, Ted. Thank you.

TED FRAIZER: I know (laugh). Sections 27 to 30 of the bill do cover the property and casualty rating sections and they largely follow the product from LB 1185 which Senator Louden was so influential in getting worked into shape, getting it on the floor, getting it priority last year but it just didn't get all the way through. So our association is very much in support of the file and use provisions in the bill. Thank you.

SENATOR MINES: Thanks. Any questions from the committee? Seeing none, thanks again, Ted.

TED FRAIZER: Thank you.

SENATOR MINES: Thank you. Next testifier. This is number five of six.

COLEEN NIELSEN: Chairman Mines, members of the committee, my name is Coleen Nielsen, C-o-l-e-e-n N-i-e-l-s-e-n, and I am the lobbyist for the Nebraska Insurance Information Service which is an association of property casualty insurers doing business here in Nebraska. Their market share represents probably the majority of the property casualty insurance business here in this state. I'm here to testify in support of LB 119, in general, and specifically in support of the rate filing requirements and the change in them. I'd be happy to answer any questions.

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SENATOR MINES: Thank you. Questions from the committee? Coleen, thank you. Next testifier. Korby, you're it (laughter).

KORBY GILBERTSON: (Exhibit 3) Good afternoon. I think we actually have seven I noticed that...

SENATOR MINES: Oh, we have seven. My mistake.

KORBY GILBERTSON: For the record my name is Korby Gilbertson. That's spelled K-o-r-b-y G-i-l-b-e-r-t-s-o-n. I'm appearing today as a registered lobbyist on behalf of the Property Casualty Insurers Association of America otherwise known as PCI. PCI member companies represent approximately 45 percent of the personal lines in the state and about 38 percent of the workers' comp lines and I, too, am going to jump on the bandwagon of supporting the bill, in general, and specifically, their rate and form modernization sections of the legislation. And I brought a little handout for the committee that just gives you some simple information about what has happened in other states and the benefits of going through this procedure so. And I'd be happy to answer any questions.

SENATOR MINES: Questions, committee? Seeing none, thank you, Korby.

KORBY GILBERTSON: Thank you.

SENATOR MINES: Next testifier, please.

TERRY HEADLEY: Chairman Mines and members of the Banking, Commerce and Insurance Committee, my name is Terry K. Headley. And for the record, that's T-e-r-r-y. Last name is Headley, H-e-a-d-l-e-y. I am an insurance agent investment adviser from Omaha and owner of Headley Financial Services. And additionally, I serve on the national board of trustees for the National Association of Insurance and Financial Advisers. And we are going to provide some redundancy here and say that our organization fully supports LB 119 and more specifically, section 37 dealing with the interstate compact model regulation and urge its enactment by the Legislature. NAIFA is a staunch supporter of the interstate compact as adopted by the NAIC, the National Association of Insurance Commissioners. The model act

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reflects input from insurance regulators nationwide and was developed with recommendations from insurance legislators, state legislatures, attorneys general's offices, consumer and industry groups including NAIFA and other interested parties. After a substantial effort, the NAIC was able to craft a legally sound and politically acceptable document. State legislation to enact the compact should closely follow the NAIC model. We are in agreement that it is very important that states enact the NAIC model compact without material changes. The compact acts as a contract between states and will not work if states adopt differing versions of the law. To achieve the uniformity needed to make this compact a success, states should be encouraged to adopt the compact without deviations. One additional area is we do encourage the interstate compact to include long-term care products. NAIFA agrees that states should include long-term care in their compact legislation because uniform standards are needed for long-term care products. The long-term care insurance market which has grown rapidly but without regulatory consistency throughout the country would benefit from greater uniformity in the product review process. Nevertheless, NAIFA supports the compact even if it is introduced in a state without long-term care because the compact would still benefit the other product categories of life insurance, annuities, and disability income. And with that said and again in support of the LB 119 and specifically section 37 stealing with interstate compact, I would be happy to entertain any questions.

SENATOR MINES: Thank you, Terry. Any questions by the committee? I had not heard the long-term care perspective on this and that's interesting.

TERRY HEADLEY: Yes.

SENATOR MINES: And I know it's not part of the proposed legislation but it's worth noting at this time.

TERRY HEADLEY: Okay. Thank you, Senator.

SENATOR MINES: Thank you. Thanks for your testimony, Terry. Any other proponents of the bill? Seeing none. Opponents? You are one and only.

CHRIS JERRAM: I'm not that big (inaudible) (laughter).

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Maybe in size but...

SENATOR MINES: Go ahead when you're ready.

CHRIS JERRAM: (Exhibits 4, 5, 6) Good afternoon, Senator Mines. Mr. Chairman, my name is Chris Jerram, J-e-r-r-a-m. I'm an attorney in Omaha and a member of the Nebraska Association of Trial Attorneys. I brought some exhibits to show you. There are three of them. The first is a Department of Insurance newsletter from the summer of 2000, Volume 2, Market Conduct Division. The second is a certified copy from Commissioner Wagner of a policy of insurance from American Family Insurance. And I would bring to your attention on the exhibit that you just received, page 2 and on the second exhibit from American Family's policy, I'd bring your attention to page 3. This is the next one you're going to get.

SENATOR MINES: Page? I'm sorry, he's got more handouts for you. Thanks.

CHRIS JERRAM: This is the second and this is the third. Thanks. Specifically, I rise on my own behalf and as a part of the association in opposition of section 21. That's the proposed amendment to the utilization review certification act (Utilization Review Act). And briefly by history, in 1992 the act gets passed. It goes into effect in '93 providing certain minimum guarantees to Nebraska consumers that if their health claim or medical claim is going to be scrutinized by their insurer, there are certain minimum guarantees that they're provided that the review process by utilization reviewers be done by people who know what they're doing so that we can have some fairness to the process and so that Nebraska consumers don't get stuck with bills after the fact. In 1998, the act was amended to allow, in addition to concurrent and prospective review, retrospective review. And since that time as far as we know, the Nebraska consumers have been benefiting from that act. And the first exhibit I gave you, Commissioner Wagner of the Nebraska Department of Insurance Market Conduct Division said unequivocally that they had received reports that a number of the auto insurers in Nebraska were having medical payments claims sent to Utilization Review. And unequivocally, in his newsletter from that summer, told the property and casualty insurers, you are within the scope and

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covered by the URCA (phonetic), the Utilization Review Act. And so it was a little odd today to hear that this is just a clean-up bill when the department from at least the summer of 2000 has taken the position that these insurers are definitely within the purview of that act.

SENATOR MINES: Okay.

CHRIS JERRAM: The second two exhibits go to basically show you that American Family Insurance on page 3 on the top left portion of the page, in reviewing medical payments claims for purposes of determining whether the treatment is reasonable and purposes of what the charge is and whether the treatment is necessary, and that goes to frequency of treatment, duration of treatment, and to causation, whether this injury came from that accident. They reserve the right to use managed care techniques. Well, if they're using managed care techniques, one of those is utilization review. Then, just bringing to your attention, there are insurers in this state that are engaging within the terms of their policy in this type of conduct and American Family is a pretty big insurer in the state. But by far, the biggest insurer, probably insuring one in five drivers in the state is the third exhibit. State Farm's policy amended to re-endorsement that went in effect in February 1993, that I obtained from the Department of Insurance. And on page 2 of the third exhibit, State Farm says, we have the right to make or obtain a utilization review of the medical expenses and services to determine if they are reasonable and necessary for the bodily injury sustained. So here you have the insurer by its own choice, the underwriters and actuaries inserted the language, utilization review, within their policy clearly bringing themselves within the confines of the act. I mean, they didn't choose another term, we have a right to have a third party review your bills or some other term, brought themselves within the act. So all we're asking for is that the minimum guarantees that the Nebraska consumers have enjoyed since the act went into effect in 1993 be continued. We don't view this as a clean-up bill by any means but rather a substantive change that should be debated on its merits and removed from this legislation. And if there's any other questions that you might have...oh, I have one more comment. The biggest thing that people get by the utilization review certification act (Utilization Review Act) is that the reviewers are trained. They're

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educated so that they can make reasonable and intelligent decisions as to what is reasonable, what is necessary. And so that's the big benefit. Is there any questions?

SENATOR MINES: Good job. Questions? Senator Flood.

SENATOR FLOOD: What kind of training do they receive?

CHRIS JERRAM: Well, there's...under the act, the utilization review accreditation commission provides the typical education that you might have for...if you're in the legal field you might have continuing legal education, but URAC provides classes and training and that sort of thing. Now while it's geared mostly for the health side, the minimum training they get is in making determinations, although it's not P&C driven, it's health driven. It goes to the reasonableness; it goes to necessity, frequency, and duration. So the training URAC gives, while it's not certifying P&C but health, it goes to, as we understand it, and they have a web site. Okay, we can get you that information, urac.org.

SENATOR FLOOD: Thank you.

SENATOR MINES: Great. Questions? Any further questions? Seeing none, thank you, Chris. Appreciate you coming in.

CHRIS JERRAM: Thank you, Senator.

SENATOR MINES: Are there any other opponents to the bill? Anyone in a neutral capacity? Hearing none, we'll close this part of our public hearing. Oh, wait, we do have a neutral. Didn't we...no. That's it. Thank you. It is a quarter to three, and our next bill is LB 118 by Senator Cunningham. And we will adjourn following the hearing of this bill so I will open the public hearing portion of LB 118. Welcome, Senator Cunningham.

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SENATOR CUNNINGHAM: Well, thank you, Chairman Mines and members of the committee. And might I be one of the first to say with my limited experience before this committee that you appear you're going to do a fine job as Chairman

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(laughter).

SENATOR MINES: Thank you so much. Thank you so much.

SENATOR CUNNINGHAM: I'm here today to introduce...pardon me, I'm Senator Doug Cunningham, C-u-n-n-i-n-g-h-a-m. I'm here to introduce what I hope is a rather simple bill. LB 118 amends the section of statute in the Equipment Business Regulation Act that deals with the termination, cancellation, or nonrenewal of a dealer agreement and the notice requirements for such actions. Under LB 118, if an implement dealer provides a written request containing certain specified information to their supplier or manufacturer for the sale or transfer of his or her dealership, the supplier or manufacturer shall approve or deny the request within 60 days. If no action has been taken on the request within that 60-day time, the request is deemed approved. If the request is denied, the supplier or manufacturer shall provide the dealer with written notice specifying the reasons for the denial. The supplier or manufacturer may only deny a request based on the buyer's failure to meet reasonable requirements consistently imposed on other such transfers and approvals of new dealers. Now I've been working with this concept for more than a year now. I became interested in this subject when one of my constituents notified me of his desire to sell his implement dealership. However, he found that since his dealership is under contract, the supplier or manufacturer did not have to extend the contract to the new owner. This particular constituent had just invested \$200,000 to remodel his facility to bring it up to new standards that guaranteed a higher payback on warranty work. Now as I understand it, car dealers have some added safeguards when selling their dealerships and I had initially looked into the prospects of some type of legislation in that order but we came up with some possible constitutional problems. But since that time, we've had meetings with the major equipment manufacturers, Caterpillar, John Deere, Case IH, and the equipment dealers. They've agreed to work on this legislation. The result is this legislation and as I understand it, all parties now support this bill. Under LB 118, the supplier or manufacturer can no longer just say no. They must give the dealer a reason for denying the request to transfer the dealership and the denial must be based on the failure of the buyer to meet reasonable requirements consistently

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imposed on other such transfers. Additionally, the decision must be made in a certain time frame and I feel that this is a good compromise. I would like to thank all of those that were involved in the compromise and the drafting of this legislation and the willingness to work together. And I can answer any questions you have and if there's any technical questions, we have some individuals following me that might be better.

SENATOR MINES: Thank you, Senator. Any questions of Senator Cunningham? Seeing none, Senator,...

SENATOR CUNNINGHAM: Thank you.

SENATOR MINES: ...thank you. Let's take the number of folks that are in support. Would you please raise your hand? I see one, two, three, four, five, six. Those in opposition? There are none. And those in a neutral capacity. There are none. Yes, sir, welcome.

MIKE CAIN: Thank you.

SENATOR MINES: Yeah, go right ahead.

MIKE CAIN: My name is Mike Cain. I happen to be the implement dealer that Senator Cunningham was referring to (laugh).

SENATOR MINES: All right. How do you spell your...?

MIKE CAIN: Mike Cain, M-i-k-e C-a-i-n.

SENATOR MINES: Great, thanks.

MIKE CAIN: I'm a resident of Knox County. My address is Bloomfield. I'm here to ask for your support for LB 118 and I'd like to give you a little background. Since 1979, my partner, Bill Hesse and I who have been the operators of Hesse's, Incorporated, a full line farm equipment dealership located in Crofton, Nebraska. Hesse's was established in 1946 as an International Harvester dealership and as a result of the mergers and acquisitions in today's world, in 1985 we became a Case IH dealership. Today the sign still says Case IH but the company we represent is Case/New Holland, just another one of the acquisitions. I'd

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say it's fair to say that in the eyes of our farmer customers that our business is more stable than the manufacturer we represent perhaps. At the time we purchased Hesse's I was advised by IH dealer development people that it was one of the good dealerships in Nebraska and it has been. We have always made a profit. We have a loyal customer base, a large trade area, and good employees. We have regular customers in Knox, Cedar, Dixon, Pierce, and Boyd Counties. Since '79 we have always employed from 18 to 23 people. Hesse's is the largest private employer in Crofton, Nebraska, and one of the largest in Knox County. We've always tried to comply with the requirements of our manufacturer and our major supplier. We have installed the required computer systems. We've purchased the suggested shop tools. We built a new warehouse. We built a new set-up building. We've done a major remodel on our building. We spent about \$600,000 on capital investments in the last seven years. We are what Case calls a certified dealer. That's their highest classification. About three years ago we reached an agreement in principle to sell our business to our neighboring Nebraska dealer. After making Case aware of our plan, we were advised that we were operating in the Yankton, South Dakota, sales territory and thus considered a nonreplacement location. In short, we could continue to operate our business as long as we chose but when we were done, Case was done. For someone to continue to profitably operate our business they must have a Case contract. The parts and repair are part of the business, requires that. You just can't get the parts anywhere else. And with the history of 60 years of machinery out there, you certainly need those parts. Our proposed successor currently operates a few other Case dealerships in Nebraska. Declining our transfer of ownership wasn't because of lack of capability or lack of financial background. It was because our territory had been arbitrarily assigned to another dealer. Your support for this bill isn't needed just so that we can sell our business. Your support is needed so that out-state Nebraska can continue the good and viable business as it has. This is a giant issue to the 20 families whose livelihood is derived from our store. It could keep them from relocating. An orderly transition of our business is important to our local grocer, our local insurance man, service station, school district, fire and rescue squads. Your support is needed so that farmers can continue to purchase combines and

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tractors from good dealers even though they may operate in small towns. If after 60 years, a transition can be arranged between a qualified buyer and a willing seller, the manufacturer should be required to continue to provide this product. Thank you. Any questions?

SENATOR MINES: Nice job, Mike. Questions by the committee?

MIKE CAIN: You think I'm nervous, you're right (laugh).

SENATOR MINES: Was this brought last year on your behalf as well? This was brought differently and I think Senator Cunningham or someone else brought it at that time.

MIKE CAIN: No.

SENATOR MINES: And the obvious question might be, why should state government get in between a manufacturer and its dealers? And I guess I might ask you that question. Why should government get in the middle?

MIKE CAIN: Well, I would say that if we run a good enough business for somebody to want to buy it, that it is better that they decide that than someone in a corporate office.

SENATOR MINES: Okay. I think that's a straightforward answer. Thank you. Any other questions? Seeing none, thank you very much, Mike.

MIKE CAIN: Thank you.

SENATOR MINES: Next testifier. Welcome.

JANET EGGERS: Senator Mines, my name is Janet Eggers. That's Janet, J-a-n-e-t. Eggers is E-g-g-e-r-s. I'm the president of Geneva Implement Company in Geneva, Nebraska. I'm also the president of the Iowa-Nebraska Equipment Dealers Association. Our dealership, we also have branches in Hebron, Nebraska, and Superior, Nebraska. Just for a real quick history, my father began the business in 1960 with the additions in 1981 and 1996. I am, therefore, the second generation in the family business. I have a 17-year-old son and he may or may not wish to continue on. At that point of age, who knows, you know? And I guess just very simply, I mean, if he does not choose to come back to

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small town, Nebraska, and continue the business, I guess I would like to have the right to sell it to an appropriate or a qualified buyer if, you know, one is found at the time...the time any decision is made. I just don't feel like with Mike's case that when he's got a viable buyer, he should be given the right to go ahead and sell. Looking at it on another more broader perspective than just taking care of my family's business, I guess the same thing with the rural economics of it. I'm not like Mike, I'm not the largest employer in town but I'd say I'd rank up third, fourth, somewhere in there for number of employees in the small towns. And, you know, the disappearance of all these small dealerships like that will have a great impact, I believe, on the rural economy in the long run. And I think it's a viable needed business out there. As long as there's farmers they need the equipment dealerships and the availability so very short and sweet.

SENATOR MINES: Thank you. Questions by the committee?
Senator Johnson.

SENATOR JOHNSON: Just listening to you talk, it kind of reminded me of some other people that I've talked to in small towns. For instance, owners of pharmacies and so on.

JANET EGGERS: Um-hum.

SENATOR JOHNSON: That they really have worked all their life with the idea that the pharmacy's sale would be their retirement income. Some of them are now finding that they don't have anybody who would buy this even without any regulations. And so I can see you being in the same position, only an outside force that you can't control making so that you may have worked hard all your life without being your retirement. And then an outside force says you don't have it.

JANET EGGERS: Right.

SENATOR MINES: Good point. Anyone else? Senator Louden.

SENATOR LOUDEN: Thank you, Senator Mines. A dealership then should be considered a piece of chattel that can be traded? Is that what you're telling me?

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JANET EGGERS: Well, as any business, you know, I think that it can be...yeah, it should be sold if there is a willing buyer, qualified financially, experience-wise, they should have, I believe, the right to sell and move it on, pass it on.

SENATOR LOUDEN: And in order to sell that then you have to get the permission from the...

JANET EGGERS: Manufacturer.

SENATOR LOUDEN: ...from the manufacturer. In other words, do you pay for that dealership or anything like that? Do you have to pay a fee to have that dealership for the manufacturer?

JANET EGGERS: Well, they don't just give you so many dollars a year and you're a Case dealer. You have to follow all of their demands or their requirements, minimal stocking levels of parts, inventory you have to order. You have to have special tools, you have to send your mechanics to their special training schools. So you pay for for it in staying certified, as Mike put it. We are also a certified dealer which means that jump through all those hoops of sending our mechanics to their schools, getting the specialized tools to work on the specialized equipment. We did everything that we needed to do to satisfy the manufacturers' demands.

SENATOR LOUDEN: Now the way I understand this, and I haven't read it that much before, but this bill mostly states out that they just have to give at least 60 days' notice if they're not going to allow this new person to purchase his dealership. And I'm wondering how we can introduce legislation to guarantee you owning that dealership. We probably can perhaps introduce legislation that you'll have 60 days' notice, but I don't know if we can...do you think we can make legislation to guarantee you owning that dealership?

JANET EGGERS: Legislation to us owning a dealership? Well, I mean we do own the dealership. I mean, the land, the building, everything, it's in my name, but...

SENATOR LOUDEN: Well, yeah, the physical...

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JANET EGGERS: The contract to...

SENATOR LOUDEN: ...with your manufacturer, yeah.

JANET EGGERS: Well, I mean I think that they should have allowed, when there is a potential buyer that's qualified, that they should go ahead and pass it on, if it was a viable business as it is there in Crofton, Nebraska. It's operating, it's profitable, it's a viable part of that economy there. They should be able to pass it on, and...

SENATOR LOUDEN: Yeah. Can they just pull that without any explanation now? The manufacturer, can he pull that dealership on you now without any explanation? Or, does he have to give you any type...do you have some kind of a contract that he has to give you notice?

JANET EGGERS: Yeah, we have a contract. And you're making me pull...you know, I do think that there are some things written in the contract, you know, and I can't quote to you right now without basically going and pulling my file back out and refreshing...

SENATOR LOUDEN: Well, that's quite all right.

JANET EGGERS: Yeah, they have to give you some sort of, I believe, reasoning.

SENATOR LOUDEN: Well, I've been around implement dealers all my life and I never have questioned them on how they get along with their manufacturer. I always just presumed that that went with the territory. But evidently it doesn't if the territory was reassigned.

JANET EGGERS: Right.

SENATOR LOUDEN: Thank you.

JANET EGGERS: Uh-huh.

SENATOR MINES: Other questions? Senator Johnson.

SENATOR JOHNSON: Yeah, make me a little smarter. I know of a town relatively close, and I'm from Kearney,...

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JANET EGGERS: Yeah.

SENATOR JOHNSON: ...about 12-15 miles away, a generation ago had six implement dealers and now have none. What would you guess would be the causes for that? Is there a fair amount of your situation, or is it other factors of demographics and so on?

JANET EGGERS: Oh, I think there's a lot of factors feeding into that. I think similarly sort of like the farmers seem to be getting bigger, so are the equipment dealers with branches out. You know, the requirements from the manufacturers have gotten tighter or tougher to come up, you know, such things as the terms on new equipment. You know, I can look at a new combine and I can't get a new combine unless I have it sold at retail or I have to pay for it within 30 days of it hitting my lot. You're talking about \$150,000-\$200,000 a pop, you know. It's a little harder for just anybody off the street to get in this kind of business. They just won't. And so I think then that you just see some natural drop-off of...you know, whether somebody wants to really get into that or they're just going to go ahead and get out and let the other dealers buy them out.

SENATOR MINES: Any other questions? Senator.

SENATOR LANGEMEIER: My understanding is this legislation is not out to create markets for dealers where there may not be a market that Senator Johnson had talked about. The idea is if you can find a willing buyer in your market area to provide some avenue to move this property on. Correct?

JANET EGGERS: Right. Right.

SENATOR MINES: Other questions? I have one before you go. Senator Loudon, in his question gave me a thought. Is there a value in the dealership as, you know, you want to get into McDonald's, there is a franchise fee or dealership fee; if you get into Case/New Holland, is there a dealership fee or do you...all the things you mentioned, you have to buy all their products, you have to train, you have to do all these things?

JANET EGGERS: There is nothing, per se, as a franchise fee...

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SENATOR MINES: Okay.

JANET EGGERS: ...that I can recall of ever seeing. It's just simply you have, in the financial backing, to support this kind of business, you know.

SENATOR MINES: Okay. Thank you so much. Thanks for your testimony.

JANET EGGERS: Uh-huh. Thank you.

SENATOR MINES: Thank you. Next testifier, please.

BRUCE KEIM: Thank you, Chairman Mines. My name is Bruce Keim, B-r-u-c-e K-e-i-m, and I am testifying in support of LB 118. I come from a family-owned dealership. We have two stores, one in Syracuse, Nebraska, which is in Otoe County, and one which is in Hamburg, Iowa, which is in Fremont County in Iowa. We started out as a dealership with Massey Ferguson in 1962. My mother and father started the dealership. In 1984, we had gotten the IH contract at that time and that was in Syracuse. Then in 1992, we bought the store in Hamburg, Iowa, which is a Case IH dealership also. So I've been involved, I guess, in buying two stores and it went through this process as a buyer, and I would guess...I think this bill is important because if someday if I want to sell my dealership or one of the dealerships--the one in Nebraska, I guess, is what this pertains to--is that I would like to have the opportunity if I find a buyer that is qualified, that we could sell it. And so that's, I guess, why I'm testifying today. I do think that economically, and Janet said this also, that when you're in a town, the implement dealer is usually between maybe sometimes the first leading employer down to about the fifth leading employer in a town. So economically, it really is a boost for the small communities, that they keep their implement dealership. I guess that is all I have.

SENATOR MINES: Great. Any questions? Bruce, when you bought your dealership in '92, did the manufacturer have to give their blessing and say, go right ahead?

BRUCE KEIM: Yeah. I was going to describe a little bit of how you go about this. Maybe that would help you, how you

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go about buying a dealership. The first one in Syracuse, we got together with the dealer and he wanted to get out of business, and we needed another line to keep ours really going because what we had wasn't going to keep us busy full time all year around because we basically sold combines and we wanted something where we had more tractor business. So you had...at that time we talked to the IH company and they said, well, go ahead and continue your talks. And we continued our talks, and they said, well, we'll go ahead and you send in what they called a letter of intent as to what your intent is to do and how you're going to operate it. And this is where, you know, they don't have to tell you, yeah, hey, this is why we didn't want you as a dealer, you know; they just tell you yes or no. And I guess this is part of the legislation is that they at least let you know why you were not considered. And in '92 then, the purchase, the dealer came over and talked to us and we said we'd be interested, and so we went over there and we got together with the price and sent in our letter of intent again, and it was okay.

SENATOR MINES: Okay. So the dealer...or the manufacturer does plug in and give the blessing?

BRUCE KEIM: Yeah.

SENATOR MINES: Okay. Any other questions? Senator.

SENATOR JOHNSON: Well, I thought up one more. The only downside that I can see or reason to come up with is that if we put too many restrictions on International Harvester or Case or whomever that if we control them too much so that we take away their perceived efficiencies, would they then stop servicing in that whole state?

BRUCE KEIM: Oh, I don't think they would. You know, if they have a market there, they're going to want to be there, is my opinion. You know, as I understand it is they have all okayed that this bill is okay with them and so, you know, if they didn't...if they thought that was a problem, I'm sure they would probably be here to...

SENATOR MINES: Right. Thank you. Other questions?

SENATOR PAHLS: Yes, I have a question like...

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SENATOR MINES: Yes, Senator.

SENATOR PAHLS: Okay, the car dealerships. If Tim brings in a gasoline, is that...I know it's different but is it the same...about the nonlease and...

SENATOR MINES: I can't answer that. I don't know. I don't know. Maybe off the side, we can ask Tim about that.

SENATOR PAHLS: Okay.

SENATOR MINES: You caught us, Senator. You caught us. Other questions? Thank you very much for your testimony, Bruce.

BRUCE KEIM: Okay. Thank you.

SENATOR MINES: The fourth testifier is...

KORBY GILBERTSON: (Exhibit 1) Good afternoon, again.

SENATOR MINES: Good afternoon, again.

KORBY GILBERTSON: Chairman Mines, members of the committee, for the record, my name is Korby Gilbertson, K-o-r-b-y G-i-l-b-e-r-t-s-o-n. I'm appearing today as a registered lobbyist on behalf of the Association of Equipment Manufacturers so they are here. I have a letter to pass around to the committee from Mr. Jerry Parkin from John Deere that kind of recounts the amount of give and take that has gone on on this process, and the equipment manufacturers are comfortable with the results and what has happened with LB 118, specifically the language that talks about the reasonable requirements that the manufacturers can place on the implement dealers. I'd be happy to answer any questions.

SENATOR MINES: Thank you. Any questions by the committee? Korby, why now? You know, why...how did...do you happen to know the process that came together? Why are the manufacturers...

KORBY GILBERTSON: Well, my understand...I actually worked on this a little bit this summer and then disappeared for

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four months on maternity leave. So I worked on it this summer a little bit. It's my understanding it has been going on for several years.

SENATOR MINES: Yes.

KORBY GILBERTSON: I think that two years ago there was going to be a bill introduced but I don't think it actually ever was introduced.

SENATOR MINES: Okay.

KORBY GILBERTSON: And then the parties came to the table and worked through this and came up with this solution that you find in LB 118.

SENATOR MINES: Very good. No further questions? Thanks for your testimony.

KORBY GILBERTSON: Great. Thank you.

SENATOR MINES: The fifth testifier. Good afternoon.

LARRY DINKEL: (Exhibit 2) My name is Larry Dinkel, spelled L-a-r-r-y D-i-n-k-e-l. Good afternoon, Senator Mines and members of this committee. I am co-owner of Dinkel Implement Company in Norfolk and Scribner. The implement has been in business there 52 years, has approximately 25 employees. I've been active in that business in that location in Norfolk for over 30 years. My support for LB 118 comes from concern for the ongoing value of my and my fellow employees' equipment dealership businesses. Today the transfer of ownership can be quite difficult. First of all, you have to find a willing buyer with proper capital. Referring to Senator Johnson's comment about pharmacies, he could probably sell it if he could find somebody that wanted to buy it. You know, concern today is if we find somebody, we want to get them approved if they're proper. Determining who or if anyone can receive ownership might not be in the best interests of the dealers or our customers, and we're both taxpayers of Nebraska, of course. Thinking of Mr. Cain's testimony and that location going under the jurisdiction of a dealer in Yankton, there would be an awful lot of Nebraska dollars flowing into South Dakota. I don't think any of us want that to happen necessarily. Our

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suppliers do have, and I think all of the suppliers today have, a very stringent dealer standards that we have to comply yet. Janet talked about some of those, and they're quite stringent and anyone that wants to become an implement dealer, or buy another dealership out, is very well aware of those standards that they have to comply by. And the competitive nature of farm equipment today will determine whether that dealership for that location survives or does not survive. And that's all we're asking for is for that happen rather than a supplier determining that. Okay? Thank you.

SENATOR MINES: Thank you. Any questions? I'm sorry. Senator Louden.

SENATOR LOUDEN: Yeah, will 60 days help? I mean, right now my understanding is that if you wanted to sell your business, that they can...they don't have to give you any notice at all. They can just say yes or no, and they can wait for however long they want to say yes or no. Is that what...

LARRY DINKEL: I think I have that understanding that's correct. They can continue to just, so to speak, put you off in making that determination. In the meantime, you're wanting to sell your business and your customers find out that you want to do that, so your value of your business could deteriorate considerably in that period of time.

SENATOR LOUDEN: And by putting in that they have to let you know in 60 days, that would...would that solve a lot of problems or would that help or...

LARRY DINKEL: I think that would help considerably. If someone has the proper capital and the need to be in the business, that will give them sufficient time, 60 days, and they can look elsewhere if they'd like to.

SENATOR LOUDEN: Okay, because I'm wondering, you know, in here there's really nothing in there that if they wait 65 days or if they wait 70 days, there's nothing really in here that...

LARRY DINKEL: I think says...doesn't it state that it's automatically approved?

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SENATOR LOUDEN: Well, I know but if they own the chips, they can still stay no. I mean, they...

LARRY DINKEL: I suppose to some degree you're correct, but we have a law that we...

SENATOR LOUDEN: ...and you're playing with their marbles, so if they want to take them and go home, why what can we do? That's my concern is, what can we do to remedy the situation?

LARRY DINKEL: I see.

SENATOR LOUDEN: We can give lip service, you know, forever but until we find a way that forces them and then we get, like Senator Johnson mentioned, if we get too forceful, why, you know, will they be that much tougher to do business in Nebraska?

LARRY DINKEL: I think this would be sufficient. And the last testifier that brought the letter of support from John Deere Company should give a pretty good indication that they're in support of this and will probably comply with it. I know I represent...our supplier is New Holland, CNH, same as Mike's, only a sister company of that and I know most of the management and they have no problem with this.

SENATOR LOUDEN: If, like this letter from John Deere now, I don't know how often you have to renew contracts or you have to renew your agreements with them or what, can some of this be incorporated into your agreements when you make an agreement with your supplier?

LARRY DINKEL: I suppose it could have been. They make new contracts wherever they would like. If you ever wanted to see one of them, you would see how one-sided it truly is.

SENATOR LOUDEN: Big corporations, yeah, they...

LARRY DINKEL: Yeah. The dealer doesn't have much at all.

SENATOR LOUDEN: Is there any movement in your organizations to incorporate this into your agreements with them?

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LARRY DINKEL: We had major changes in agreements a few years ago and our Iowa-Nebraska Dealers Association tried very diligently to make some changes within the contracts. I don't think this was one of them, I don't believe. There was some bigger issues at that time. But it's possible and this will probably bring them to pass to be in the contracts.

SENATOR LOUDEN: That's what I'm wondering if it's going to take more than just legislation; it's going to take, what would you say, a two-pronged attack, something, in your agreements with the suppliers besides probably legislation in order to make this thing work. Do you agree?

LARRY DINKEL: I don't think so. You know, we're still...if I can't trust my supplier to a point, I guess I should look for a different one, you know. So I think if it becomes an LB, becomes law of Nebraska, I think that's sufficient without having some kind of a strong penalty for not abiding by it. I think we'll be fine. And I suppose if they start not abiding by it, we'll have to come back and ask for one.

SENATOR LOUDEN: Okay. Thank you.

LARRY DINKEL: Thank you.

SENATOR MINES: Thank you, Senator Louden. Senator Flood.

SENATOR FLOOD: For purposes of disclosure, I want the committee to know that I am personal friends with Larry Dinkel, but I've also represented him as a private practice attorney on subjects that have nothing to do with this. But I wanted to make sure that was on the record.

SENATOR MINES: Let it be noted. Thank you very much. Senator Jensen.

SENATOR JENSEN: Thank you, Senator Mines. Mr. Dinkel, are you granted any kind of an exclusive area of representation in your dealership?

LARRY DINKEL: They do not give us a specific territory. They give us a territory that we are responsible for, though. We can sell outside of that territory, no doubt, but we do not get credit as far as due to standards and so

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on for doing that. It actually counts against us, at this point.

SENATOR JENSEN: Okay. But there's nothing to say that, if they wanted to, they could go into Neligh, Nebraska, and set up a dealership...

LARRY DINKEL: Absolutely. There's...

SENATOR JENSEN: ...and be in competition with you?

LARRY DINKEL: You're absolutely correct. There's nothing...if I'm not doing what I'm...my dealer standards and the guidelines they set forth, they can do that. They can certainly do that.

SENATOR JENSEN: Thank you.

SENATOR MINES: Any other questions by the committee? Seeing none, Larry, thank you. Nice job.

LARRY DINKEL: Thank you, Senator.

SENATOR MINES: The sixth and final proponent. Welcome.

ANDREW GOODMAN: Thank you. My name is Andrew Goodman, A-n-d-r-e-w G-o-o-d-m-a-n. I am executive vice president of the Iowa-Nebraska Equipment Dealers Association. I also serve on the North American Equipment Dealers Association Task Force on Dealer-Manufacturer Relations, and I have done so since its inception in 1997. I want to thank Senator Mines and the committee for allowing me to speak with you today.

SENATOR MINES: Our pleasure.

ANDREW GOODMAN: This issue of dealer termination has been an ongoing issue across North America that we have been working together with the manufacturers to try to find some resolution. It is an issue that does occur in other industries as well. We have worked specifically on the local Nebraska issue for about three years and have tied that together as well with trying to find some wording that will work well in our industry and that would be reasonable for all parties to work with. There is legislation in the

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auto industry, for example, in Nebraska and in most states. That legislation is more detailed, it is more stringent. There was a certain level of discomfort with it in working in our industry, and some problems with it working in our industry in some other states. And so, in working over several years, we worked to find some wording that still allows the manufacturer to terminate a deal or not allow the transfer of the business. Now the manufacturer contracts are rather interesting documents. They are written by the manufacturer and they are written to serve the manufacturer's purpose. And you might ask, well, why are they written that way and why don't you, as dealers, do something about that? Can't you negotiate something? And the fact is we can't. We're restricted by antitrust legislation that does not allow us, as a group, to negotiate that. And we're also, both we and the manufacturers, are restricted by legislation that says, basically, whatever contracts are issued have to be the same. They have to be standard, equal contracts for everybody. So one really can't negotiate a separate contract with a manufacturer that another dealer doesn't have. So we're in this kind of awkward box. As a result of this, over the last 50 years, these laws have developed and gone into place to help give us some sort of format to work in that's fair to the parties. And this really does that. Sixty days seem to be a reasonable amount of time to give notice. The manufacturer still reserves the right to reject the transfer for a valid reason. The manufacturer can set down the terms of transfer, what it takes financially, what it takes in terms of management capability, marketing plans, so on and so forth, to operate that dealership, and can still say no. The only thing we're saying is if a seller of a business brings a party that wants to buy, brings them and that person meets all the standards and is a good citizen of the community, that that deal should be allowed to go through. I would...I know there were some questions that you had that were unanswered that I think I could probably help you with and there were so many, I don't recall all of them.

SENATOR MINES: Well, thank you. Let me open it up to questions. Senator Langemeier

SENATOR LANGEMEIER: I only have one question. It seems the written notice is a key buzz word in this, both giving and receiving, and I'm not sure I need to direct it there or to

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our legal counsel. Is written notice defined? What that...what is written notice? I mean, is that a dealer sent an e-mail in or sent a registered letter in, or...I mean, is that somewhere in statute defined?

SENATOR MINES: Mr. Goodman.

ANDREW GOODMAN: It is defined in the statute as certified mail, and that's really to prevent somebody from walking into the dealership and say saying to an employee that's not a principal that some major issue terminated or whatever. By the way, also, there was an issue that came up earlier about cause for termination of the dealership and that is in the statute already and time to cure are reasons for terminating, so that detail is in there as well.

SENATOR MINES: All right. Other questions from the committee? Senator Jensen.

SENATOR JENSEN: Thank you. Are there any manufacturer-owned stores, or is everything done through a dealership?

ANDREW GOODMAN: Manufacturer-owned stores are rare. I don't believe, to my knowledge, that I can think of there are any left in Nebraska. The dealerships are pretty much owned by independent parties. There are some states where there are some manufacturer-owned.

SENATOR JENSEN: So they need each other, hopefully.

ANDREW GOODMAN: They really do. They need the local community. They need the people who know the people there and know what's going on and really serve the community. Our industry is about serving the community, providing services. And if the dealerships get to be too few and too far between, we can't do an effective job of servicing.

SENATOR MINES: Other questions? Seeing none, thank you very much for your testimony. Are there other proponents? Are there opponents? Are there neutral testifiers? Seeing none, Senator, would you like to close?

SENATOR CUNNINGHAM: Thank you, Senator Mines. I appreciate your time listening to this bill. I hope it's not a sign of

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my year. It seemed like an awfully lot of questions for an uncontested bill, so I'm hoping I have better luck the rest of the year. (laughter) But I might add that we're only talking about the good businesses here, the viable businesses. We're not talking about the businesses that are going broke. The manufacturers just have to state the reason that they're going to deny the permit, so we need to remember that. These are only the good profitable businesses. They wouldn't have found a buyer if it weren't going to be a profitable business in the most case. And I might take this opportunity to relate it a little bit to...you all realize I'm a grocer. And Procter and Gamble is probably one of the biggest manufacturers of grocery products. Now I'm sure that Procter and Gamble could make the decision that it would be cheaper and more cost efficient for them to sell all of their products through Wal-Mart and not send products to other warehouses or other types of stores. And when that happens, it's going to be devastating to rural Nebraska and also, in my mind, urban Nebraska, but imagine what's going to happen in rural Nebraska. So that would be the other thing. The business that I brought this here, I wasn't going to say his name because I didn't know that he was, but it would be a disservice if that business, as profitable and as good of a business as he has; if that business were not able to go on, it would be a disservice to the ag community and all of northeast Nebraska, and it would be a huge disservice to the city of Crofton and the economy of the area. So I would urge you to send this bill to the floor, and I'm available for any questions.

SENATOR MINES: Thank you. Are there questions of the senator? Seeing none, thank you very much. This public hearing is closed. We are going to recess for ten minutes so we'll begin the next hearing at 3:35.

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SENATOR MINES: All right, ladies and gentlemen, it is 3:36. We're overtime, and I will open the public hearing on LB 59, which I will introduce, so let me turn this chair back to Vice Chair Redfield.

SENATOR REDFIELD: Senator Mines, how nice of you to join us

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again. (laughter) The floor is yours.

SENATOR MINES: It's always a pleasure. Thank you so much. Thank you. For the record, my name is Mick Mines, M-i-c-k M-i-n-e-s, representing Legislative District 18. I'm here today to introduce LB 59. This is the Microenterprise Development Act. It's a modification of that act that was passed in 1997, and it makes it possible to provide services like, loans, training, technical assistance, to micro businesses with five or fewer employees in Nebraska. The original act, defined as microloan as any business loan up to \$25,000. LB 59 would change that definition to read "any business loan up to \$35,000." And that's the basic pretense of this legislation is to increase the amount of the loan from \$25,000 to \$35,000. There are two reasons for the proposal. The microenterprise industry in the United States has moved to an expanded definition of microenterprise loan to mean loans of \$35,000 or less, and then making this change to Nebraska statute would keep microprogramming in the state in line with national trends. And then number two, as capital needs for micro businesses increase beyond \$25,000 limit, the business may grow into an equity gap. These are businesses that typically cannot get a loan at a bank, and an increase in the microloan size would provide them necessary capital for continued growth while building equity. I'd like the committee to consider passage of this bill. Rose Jaspersen and Kendall Scheer are here today to provide additional information on the microenterprise process, so I would ask that you direct questions to them. And that's it.

SENATOR REDFIELD: You're trying to slip out of the question period, I see. Thank you, Senator Mines. (laughter)

SENATOR MINES: Yes, I am. Thank you so much. Thank you.

SENATOR REDFIELD: And we have proponents. Please state your name and spell it, for the record.

ROSE JASPERSSEN: (Exhibit 1) My name is Rose Jaspersen, R-o-s-e J-a-s-p-e-r-s-e-n. I guess they say that's Danish, even though I live close to Swedish Oakland. And I do have some handouts. Welcome, hello to, and thank you to the committee for inviting me here today. I am the director of the Nebraska Microenterprise Partnership Fund. My

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organization serves as the administrator of the funds that come from the Legislature to support work with microenterprises in the state, and I'm here today to testify in support of this bill for two reasons. The senator mentioned there that we're talking about microenterprises. These are businesses with five or fewer employees. In the state of Nebraska, that encompasses 87 percent of our businesses. They are small and oftentimes maybe don't come on the radar screen when we're talking bigger economic development, but I think it's important to keep in mind that they are the pool from which the big businesses spring. So it's very important that we attend to their needs. The original act, one of the purposes in that was to assure that micro businesses be able to realize their full potential to create jobs and enhance entrepreneurial skills and activity. And this change that we're proposing in LB 59 would increase the definition of a microloan from \$25,000 to \$35,000. The last three years, on the national level, the U.S. Small Business Administration has a microloan program, and for the last three years they have defined microloan as \$35,000 or less. And some of our programs here in Nebraska are also microloan participants, so to have that continuity between the national standard and what we have here in Nebraska would be very good. Also, Nebraska is recognized as a leader nationally in the microenterprise work that takes place. We oftentimes are the first to do things that the rest of the country will follow. And as part of my job, I report to you, the Legislature, each year in a report. This copy that I attached is the 2004 report. You will get the 2005 report in the next two weeks. But it's an example of the data that we collect every quarter from our programs, where they tell us about the work they do. Right now, we also report that information, some of that information on the national level so we can be included in the data for this sector across the country. And Nebraska is really under represented in that data because we're only reporting lending up to \$25,000 as opposed to \$35,000. Another reason to support this is three of the programs that I fund also have the ability to make larger loans, and they quite often enter into packages where they work with the local bank, putting in some micro program money and local bank money. And so having a larger definition on microloan would allow them to use more of their microloan dollars potentially in that package, and oftentimes that helps facilitate the movement of the loan. This act has been a very good thing

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for the state, has an excellent history. You'll see on the single page I handed out, this is the data for the 2005 report that you will get in a couple of weeks. And if you look at line 5 there, you'll see average loan size. Starting back in June of 1998, we were reporting an average of \$4,700. And you can see how it has gradually increased every year since then, so that this year it's going to report out at \$10,903. Again, I think that's indicative of the fact, or supports the fact, that an increase in this definition, at this time, would be very good for the micro businesses in the state. I want to thank you for the opportunity to testify before you. Are there any questions?

SENATOR REDFIELD: Committee, do you have questions? I do have one.

ROSE JASPERSEN: Yes.

SENATOR REDFIELD: I'm looking at the fiscal note and looking at your current appropriations, looking at your request, not knowing what will happen with that request, and factoring that, in fact, if you went to the maximum on a loan, you may end up being able to give loans out to about 30 percent fewer different businesses.

ROSE JASPERSEN: Okay.

SENATOR REDFIELD: How would you respond to that?

ROSE JASPERSEN: I will address that. You're referring to the \$500,000 increase in grant funds?

SENATOR REDFIELD: No, I'm saying if you were, in fact, using a maximum of \$25,000, distributing those funds,...

ROSE JASPERSEN: Right.

SENATOR REDFIELD: ...and you were to go to \$35,000, that means you can distribute the same number of funds to fewer people.

ROSE JASPERSEN: Right. Right.

SENATOR REDFIELD: So I'm looking to see what proportion of your loans are actually in that maximum category now, and

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how many fewer people we might be able to serve if, in fact, there were not more dollars available.

ROSE JASPERSEN: Okay. Good question. The loan funds that the partnership fund uses to lend to programs, and then programs relend those to businesses, I gather those loan funds from various sources. Right now, two-thirds of my loan capital is coming from banks where I borrow the money at a very low interest rate. I've been very successful in doing that and can only feel that in the future I'm going to be able to continue that. So when you talk about increasing the loan size, being able to make less loans, I don't see that as a problem because I think I will be able to access more loan funds through the banks.

SENATOR REDFIELD: Thank you.

ROSE JASPERSEN: Uh-huh.

SENATOR REDFIELD: Any other questions? Thank you for coming.

ROSE JASPERSEN: Yes. Kendall Scheer is going to follow me, and I'll just briefly preface; Kendall is from the development district in northeast Nebraska. His program receives grant funds through my organization, and he's the one who is on the ground, who is really making it happen. I gather those monies and get them out, but he's the one that really makes it work for the businesses.

SENATOR REDFIELD: Thank you for joining us.

KENDALL SCHEER: (Exhibits 2, 3, and 4) Good afternoon, Senator Mines, committee members. My name is Kendall Scheer, as Rose mentioned...I'm sorry.

SENATOR REDFIELD: Excuse me. For the record, could you spell it? Thank you.

KENDALL SCHEER: I apologize. Kendall Scheer, K-e-n-d-a-l-l; last name, S-c-h-e-e-r. I am a loan specialist actually representing two organizations, the Northeast Economic Development, Inc., and Northeast Nebraska Economic Development District. Both of those programs are programs that Rose described as one that where we do...we

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are people who are putting loan packages together. Virtually all the loans that we do do include some level of bank lending. We don't compete with banks. We become their lending partner and we make deals possible so businesses can either launch or expand. Both NED, Inc. and NENEDD serve 22 counties in northeast and north central Nebraska with their microenterprise development program. My intent today is to convey to you how the real beneficiaries, the micro businesses across Nebraska, will benefit from LB 59. NED, Inc. and NENEDD has made 59 microloans. These loans have created or retained 158.5 jobs. Every one of those loans, as I mentioned before, was made to a business that otherwise could not get all or any of the financing they needed from a traditional financing resource. Other microloan programs in Nebraska will share with you a very similar story. More importantly, we can all tell you about how these businesses create commerce for themselves and their communities, how they're growing, and how as they grow they are actually creating more jobs beyond those that, as an example the 158.5 that I mentioned before. I passed out to you a couple of profiles, and I'd like you to take a look at the first one. It's the one that says "The Centsible Shop" at the top. These are a couple of examples, and we'll start with Sheryl. This is an example of a business, that Sheryl returned to Alliance in 1999, that's where she grew up. She purchased a second-hand clothing business, The Centsible Shop, as the profile indicates. The Rural Enterprise Assistance Project, otherwise known as REAP, was a program with the Center for Rural Affairs, provided basic business training, assisted her in developing a business plan, and provided a microloan that was in conjunction with a bank loan, to help her buy a building and expand into...to include a new furniture line in this business. Since then, she's now looking to rent additional store space. Her business is growing. She's looking to broaden her product lines and she anticipates hiring more people this next year, and that will include area youth as well. So we have an interesting reach. I'd also like...I don't have a profile for her, but I'd like you to consider Cindy Johnson. Cindy is in Norfolk. She worked for many years as an audiologist for other professionals. In 2000 she launched Family Audiology and Hearing Care. The Northeast Nebraska Economic Development District, or NENEDD, worked with Cindy. We provided her technical assistance and a microloan, again with a bank loan, to help her launch her business. Since

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then, her business is doing terrific, and she is...the stage is set for her to actually create more jobs, and those are professional jobs. An audiologist is typically an occupation that is not one that's considered low paying. The other profile that I do have is for a business called E.M.S.A., and that's the one here in Lincoln. Mira and Enes Sljivo started the E.M.S.A., and you're going to ask what's the E.M.S.A. stand for. That's their initials, if you look at their names. E.M.S.A., they started this in their home, in their basement in Lincoln here in 2001. They produce smoked meats and specialty hamburgers and sausages. Since launching the business, they've since moved to a commercial location, added a European Market, started producing sausages for another label nationwide, in addition to their own brand. Sales have increased tenfold in the first three years of business. They're currently looking to expand their meat production to a new facility. A micro program here in Lincoln, Lincoln Action Program, helped them with technical assistance and business plan development, and they also received a microloan from another Lincoln-based microenterprise program, Community Development Resources, to help with equipment purchases. They have four full-time employees right now, and are looking to add two more this year. These businesses are the reason that the Microenterprise Development Act was created by the Legislature back in 1997. It created a user-friendly pool of funds that those of us in the field could use to help those unbankable, or quasi-bankable micro businesses start or expand. Obviously, it's been a pretty potent tool, as Rose's statistics certainly indicate. Like these businesses, the demands on the microenterprise industry in Nebraska are also growing. These businesses' equity gaps are real, they're increasing. These gaps could be more effectively met with microenterprise development programs if the definition of a microloan is increased to \$35,000. It enhances our reach. It allows us to be a more effective lender and a more effective partner lender, which in our case is something that we do all the time. It simply means greater business growth which I'm sure you would agree is what we're all after here. So on behalf of the Nebraska microenterprise community, I certainly encourage you to support LB 59. Any questions?

SENATOR REDFIELD: Thank you. Senator Pahls.

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SENATOR PAHLS: I'm just curious. In Holt County, it looks like most of...there's an awful lot of money there. I just wondered, can you recall some of the businesses in Holt County?

KENDALL SCHEER: We actually have several different projects in Holt County that we have funded. There was a small farm implement repair business that we funded there. We've done a feed manufacturing business there. There...some of those aren't ours. Some of those do come as a partnership with the Rural Enterprise Assistance Project. We partner with them all the time, too. For some specifics to those statistics, respectfully I'll refer you to Rose because that's probably her area of expertise to answer those there. But that's a good question.

SENATOR PAHLS: Okay. Well, just let me add one more thing. On page 10 here, it talks about a bakery shop in Omaha, Magnolia, I was there last Sunday, so I know...

ROSE JASPERSEN: Good.

SENATOR JENSEN: Did you bring any with you? (laughter)

SENATOR PAHLS: No, I ate them all.

SENATOR REDFIELD: Are there questions? Yes.

SENATOR LOUDEN: Thank you, Senator Redfield. Yeah, the Centsible Shop, I've seen that operating for the last few years there in Alliance, and probably didn't even realize that they were parties to these type of loans. But I agree, these kind of loans help these people get started in the smaller businesses and these are...especially in these rural towns, there where they have their business there right there on Main Street in Alliance. It certainly needed a business on Main Street because that's where some of our problems are on these rural towns is Main Street is drying up and going out to the Wal-Mart stores. Since Doug Cunningham isn't here, why I'll mention the word again. (laughter) But that's happened in a lot of areas. We have our malls at the edge of town and the downtown area kind of goes by the wayside. So I think it's a very good program and it seems to be working the state over. I'm quite pleased that we do have something to take over that's

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underneath the LB 775 level and, what is it--LB 608 or whatever it is at the \$250,000 level. It gets down there where some of the entrepreneurs can help get something started. So, thank you.

KENDALL SCHEER: Right. Thank you.

SENATOR REDFIELD: Senator Jensen.

SENATOR JENSEN: Could you tell me, certainly it may seem like there are failures occasionally. What is the percentage of failures?

KENDALL SCHEER: As an industry, again I'll ask Rose to refer that, to what her grantees are. Our program, of those 59 microloans that we have, I think we've only one fail. Now, I'm not going to say that we haven't struggled, some others haven't struggled, but that's business. And so certainly we're going to run into that. That's what we're here for. That's the technical assistance side of what we do. That's why that's so very important, because without it a lot of those...that number would be larger if it weren't for the fact that they didn't have somebody that they could turn to to say, hey, I'm struggling here, can you help me get through this rough patch? Personally, I was particularly pleased with the last from...you know, starting in about 2000 and up until the end of this last year when we all know we had a pretty tough economic time, and we...I was pleased with the way, in our particular case, with our clients our portfolio performed in that period of time. And I think a lot of it is due to the support that is made available through technical assistance, and that technical assistance is only available through organizations like the partnership fund, the Nebraska Enterprise Opportunity Network and the Legislature who supports our work. So I think it's been very good, in fact.

SENATOR JENSEN: Great.

SENATOR REDFIELD: Thank you, Mr. Scheer. Are there other proponents?

BOB HALLSTROM: Chairman Mines, members of the banking committee, my name is Bob Hallstrom. For the record and benefit of the transcriber, that is B-o-b, spelled either

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frontwards or backwards; Hallstrom, H-a-l-l-s-t-r-o-m. I'm here as a registered lobbyist on behalf of the Nebraska Bankers Association, in support of LB 59. The banking industry historically has looked at entities coming in to make loans to individuals or businesses with an eye towards wanting to ensure that if those are bankable loans, that we're there to make them, and that's the business that we're in. We were here when the microenterprise legislation was initially drafted and worked together to make sure that banks would be involved in the process, both in terms of providing funding for these types of loans, Mrs. Jaspersen has indicated, and any expertise that may be needed in terms of underwriting these types of loans. I think we've had a good partnership in general terms with the microenterprise loan system and are not concerned at all at this time about raising that threshold level from \$25,000 to \$35,000. You've heard these loans described as unbankable or quasi-bankable, and I think that's the key, both in terms of the need out there to help drive the economy for these small businesses and then also on the back end, to have the banker assistance in providing help in funding these loans when they do require more than \$35,000, if the legislation is adopted, that this program would then allow. I'd be happy to address any questions that you might have.

SENATOR REDFIELD: I don't see any questions.

BOB HALLSTROM: Thank you.

SENATOR REDFIELD: Thank you, Bob. Other proponents.

KURT YOST: Vice Chairman Redfield, members of the committee, my name is Kurt Yost. I represent the Nebraska Independent Community Bankers. You spell is K-u-r-t Y-o-s-t. Very briefly, we would add our support for this legislation. Senator Loudon pointed out the smaller businesses, rural economic development. This is one of those avenues, as has been spelled out by Rose and Kendall, and Bob alluded to it, with the relationships with banks. So we, too, support this.

SENATOR REDFIELD: Are there questions? I don't see any. Thank you, Kurt. Other proponents? Are there any opponents? Any neutral testimony? Then I will declare the hearing on LB 59 closed and return the chair to you, Senator

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Mines.

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SENATOR MINES: Thank you very much. And I will open the public hearing on the last bill of the day, LB 88, and I understand Senator Byars is unable to be with us so we are blessed with his legislative aide, Janet Anderson. Janet.

JANET ANDERSON: Thank you, Senator. My name is Janet Anderson, J-a-n-e-t A-n-d-e-r-s-o-n. I am the legislative aide to Senator Byars. He is co-chairing the Education Committee today and apologizes for not being here. Under current law right now, we require a written agreement between a real estate licensee and a builder/seller to include the terms of compensation before a specific parcel of real property may be identified. LB 88 attempts to amend statute by specifically providing that if the real estate licensee is a limited seller's agent for a builder, the licensee's compensation may be identified immediately preceding the builder's acceptance of an offer to purchase a specific property. So it's basically just moving the compensation agreement closer to the time of the actual decision to sell that piece of property with any house that may be built on there. This was brought to us by the Real Estate Commission. It's my understanding there's agreement by the builders and the real estate agents and that kind of thing. Les Tyrrell is here from the Real Estate Commission and he can answer specific questions. But if you have any, I will try to field them.

SENATOR MINES: Janet, our practice is that we will not question unless the senator introduces. We won't question legislative aides so, yeah.

JANET ANDERSON: Thank you. I'll testify more often.

SENATOR MINES: But we're just going to kill the rest of your supporters. But I want...is that all?

JANET ANDERSON: That's it.

SENATOR MINES: Great. Thank you for your testimony.

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JANET ANDERSON: All right. Thank you.

SENATOR MINES: Now, the room is clearing. I see we have one proponent. Are there other proponents? We have one more, two proponents. Any opponents? Any neutral? You're on. Good afternoon.

LES TYRRELL: Good afternoon, Senator Mines, members of the committee. My name is Les Tyrrell, L-e-s T-y-r-r-e-l-l, and I'm here on behalf of the members of the Real Estate Commission in support of LB 88. The Real Estate Commission was apprised of a problem in a couple areas of the state with regard to builders and real estate licensees in getting the required written agreements into effect. Under the agency relationships act, before you can represent a seller as a limited seller's agent--the reason we call it a limited seller's agent is under the law there are set out certain duties and responsibilities for a limited seller's agent as opposed to the litany that could come under a common law type of agency--that bill was passed back in 1995 and went into effect later that year. As a limited seller's agent, you are required under the law to have a written agreement with the seller, unlike with a buyer. Under the law, the default to buyer but that's not involved here, but just to give you the idea you don't need a written agreement with the buyer. But with the seller, you do need a written agency agreement. In most instances, that takes...that is a listing agreement, if you will. Most of the time they use that as a listing agreement. But it does not have to be a listing agreement. A listing agreement, of course, would indicate there was a specific piece of property or properties that were going to be sold by a seller and this licensee would list those properties, perform a certain agreement, get a compensation, and there would be a termination. They can enter into a written agency agreement which, as you can see in the bill, if you look on page 2, in lines 15-18, "shall include a licensee's duties and responsibilities...the terms of compensation, a fixed date of expiration,...and whether an offer of subagency may be made to any other designated broker." That appears in most listing agreements, but it can be done in a seller/agency agreement where I would just offer to represent you as the seller on whatever property you might have, not necessarily a specific property--that would be under the terms and conditions of the agreement. What was a problem, or what

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was brought to the commission as a problem, was the phrase "terms of compensation" in that written agreement. Now as we all know, if you're in a listing agreement, there's usually a flat fee or a percentage that you're going to pay the real estate licensee to sell that property, whatever that might be, but there's a specific property. Builders might have multiple properties, multiple lots within a development. And what was brought to the commission is that many times builders did not wish to enter into specific terms of compensation on multiple lots within a development. They wanted to wait until closer to the time when the property actually sold. Well, under the way the law is written, that really can't be done without a rather loose interpretation of terms of compensation where you could say, well, okay, with a builder, you can say the terms of compensation will be that the terms of compensation will be determined later. So you get into some loopy (phonetic) definition or interpretations to get an agreement to be there. So when this was brought to the commission, we worked on it for a number of months. It was brought back to the commission, and to solve the problem for builders with multiple lots in a development, the new language on page 2, lines 19-22, set out virtually what I just told you that interpretation was is that except if you enter into an agency agreement with a builder to act as a limited seller's agent, the terms of...the specific terms of compensation for a specific piece of property don't need to be determined with that builder until such time as a specific property has been identified as being able to sell. I also want to point out that it's permissive. So in areas of the state where they have no problems entering into agency agreements, builders entering into agency agreements with licensees, they can still do that as they have in the past and it's not a problem. This just solves the problem so that people don't have to fudge the law, if you will, or try to get around the law, but makes the law a workable situation in a specific situation with regard to a specific type of seller who is a sophisticated seller, and does not fall over into those situations such as residential properties where you can say to the...so that you wouldn't be able to say to that seller of residential, well, we'll worry about how much you're going to pay me later. Those are not included at all in this. This is specifically to builders only of new construction.

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SENATOR MINES: Great, Les.

LES TYRRELL: And I'd be happy to answer any questions. We would like to have...we would urge you to move this to the floor and support its passage.

SENATOR MINES: Thank you. Committee, any questions? Very well explained. Thank you very much.

LES TYRRELL: You're entirely welcome.

SENATOR MINES: Thank you. Next proponent and final proponent, perhaps final testifier of the day.

DOUG RUGE: Mr. Chairman, members of the committee, my name is Doug Ruge, D-o-u-g R-u-g-e. I'm an attorney in Omaha and I represent CBS Home Real Estate Company. CBS Home is a company of about 550 agents and we have a dominant marketplace in Omaha. And I come fairly well versed on the practice, at least in the Omaha community. I'm going to keep it real brief. I think Les did a very good job in explaining the predicament here. Really what we've got to avoid is a situation where people can't represent, effectively can't represent sellers. And if you're going to represent a seller, you have to enter into an agency agreement and it has to be under the terms that's specified under 76...it has to be under the terms that are specified in 76-2422. Okay? And one of those terms says that you have to specify the terms of compensation. What that effectively does is it says that people who are representing builders of new construction property may not be able to enter into those agreements with the seller/builders of new construction. And, you know, you might...logically you can take that to the conclusion that these seller/builders can't be represented when they're doing new construction. The reality in the Omaha marketplace is that builders are reluctant to enter into any kind of terms of compensation until they know what the product is, until all the plans and specifications are agreed to, until the property is identified, so that they know the product that they're getting into and, therefore, that product drives what commission they're willing to pay to the agent. And so this change is meant to address that particular situation. It's also meant to address the practice in Omaha and I think some other communities, for example somewhat in Lincoln, where

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builders are reluctant to enter into terms of compensation until the actual product is identified. I would also like to say that the...I am aware that the Nebraska Realtors Association supports this change, and the Homebuilders of Nebraska supports this change as well. With that, I'd be happy to answer any questions.

SENATOR MINES: Questions from the committee? Seeing none, Mr. Ruge, thank you. Thanks for your testimony.

DOUG RUGE: Thank you, Mr. Chairman.

SENATOR MINES: And we won't require a closing, but I presume there are no opponents, no neutral. And with that, we'll close the public hearing on LB 88, and that concludes our business for today. I want to thank you all for being here.